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Application Number 09/840,818

Filing Date: 04/24/2001

Inventors: LU & FREEMAN

Examiner Name C. L. PARRY

Group Art Unit 2614

Attorney Docket No. US010192

Sir:

Enclosed please find an appeal brief for the above-identified application.

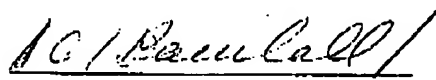
Please charge the fee for this brief to deposit account 14-1270.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application Ser. No.: 09/840,818 Group Art Unit: 2614

Filing Date: 04/24/2001

Examiner: C L PARRY

Attorney Docket Number US010192

Confirmation No.: 5953

Inventor Name(s): LU & FREEMAN

Title: WIRELESS COMMUNICATION POINT OF DEPLOYMENT MODULE FOR USE IN DIGITAL CABLE
COMPLIANT DEVICES

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

APPEAL BRIEF

Sir:

This is an appeal from the final rejection of Claims 1-21 and 24-27.

I. REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics, N.V., a corporation of the Netherlands.

II. RELATED APPEALS AND INTERFERENCES

Applicant is not aware of any related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-27 stand rejected. Claims 1-21 and 24-27 are on appeal.

IV. STATUS OF AMENDMENTS

The amendment under rule 116 was not entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1

Claim 1 recites the environment of a digital cable set-top box (150) having a host interface for a removable circuit apparatus. The removable circuit apparatus includes a point of deployment module (POD) (ref 155, spec p. 11, line 16 through p. 12, line 10, p. 13, line 11 through p. 14, line 8; ref 300, p. 17, lines 7 et seq.; ref 400, p. 23, line 1 et seq.). As explained the specification and prosecution history, the POD is a security device related to receiving data, such as cable TV signals. In most cases, this device will ensure that the consumer has paid for the services received.

The removable circuit apparatus also includes an RF transceiver (450; p. 23, line 17 et seq.)

The pod module mates with a POD host interface. The RF transceiver receives an incoming baseband signal; upconverts to an outgoing RF signal, and wirelessly transmits

to a device proximate the set top box. The RF transceiver also receives an incoming signal from the device, downconverts the RF signal to a baseband signal, and transmits the baseband signal to the set-top box.

Independent claim 13

Independent claim 13 is similar to claim 1, but slightly broader, in that a transmitting function is recited for the RF element, but no receiving function.

Claims 2 & 14

Claim 2 recites that the incoming baseband signal – processed in the removable apparatus – contains Internet Protocol (IP) packets (p. 5, lines 1-3, p. 20, line 17, p. 22, line 10; p. 24, ll. 5-7; p. 26, line 21).

Claim 14 is similar to claim 2, except dependent on claim 13.

Claims 3 & 15

These claims recite that the removable apparatus includes a data processor (410) and a memory (420). The data processor is capable of transmitting audio and/or video signals to the set-top box, for display on a TV. The memory is capable of storing a user POD application program (440), executable by the processor. See, e.g., top of p. 20, p. 26 first full paragraph.

Claims 4 & 16

Claim 4 recites that the data processor is capable of receiving user input signals from the digital cable set-top box (last par. p. 21).

Claim 16 is similar, except that it depends from claim 13, which does not recite wireless input from the device external to the set top box.

Claim 12

Claim 12 recites that the PC application program further comprises an e-mail program

Claims 24 & 26

Claim 24 recites the removable circuit apparatus is adapted to enable a respective consumer electronics function for the television set. Changing between such apparatuses changes the function for the television set (p. 19, line 19 through p. 20, line 5). In other words, the function to be protected is being bundled together with the security device that protects it.

Claim 26 is like claim 24, except depending from claim 13.

Claims 6-8 and 18-20

Claim 6 recites that the removable circuit apparatus comprises a user interface (330, p. 20, lines 7-10; p. 21, line 19-22; 430). The user interface is coupled to the data processor and capable of receiving user inputs from a user input device coupled to the user interface.

Claims 7 and 8 depend from claim 6.

Claims 18-20, correspond with claims 6-8, except depending upon claim 13.

Claims 25 & 27

Claim 25 depends from claim 24 and emphasizes the security aspects of the POD device.

Claim 27 is similar except depending on claim 13.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-2 and 13-14 stand rejected under 35 USC 103(a) as being unpatentable over US 2002/0113119 ("Bessel") in view of US 6,263,503 ("Mrgulis").

Claims 3-5, 9-12, 15-17, 21, 24, and 26 are rejected under 35 USC 103(a) over Bessel in view of Mrgulis and further in view of US 5,990,927 ("Hendricks")

Claims 6-8 and 18-20 are rejected over 35 USC 103(a) over Bessel in view of Mrgulis in view of Hendricks and further in view of US 6,081,533 ("Laubach").

Claims 25 and 27 stand rejected over Bessel/Mrgulis plus admitted prior art.

VI. THE ARGUMENT

The Examiner has cited In re MLaughlin for the proposition

"Any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." In re MLaughlin 443 F.2d 1392, 170 USPQ 209, 212 (CCPA 1971).

Two points must be noted about this quoted section. First, the passage does not sanction the use of knowledge from the disclosure to combine references. Second, the passage is in fact obiter dicta. A careful reading of the decision reveals that in fact the *sine qua non* on which claims were considered obvious or not obvious was the content of the affidavit of the expert as to whether the invention met an unsolved need.

Therefore, even if all the elements of the art are in the references – which is not clear in the case of the present application – that does not mean that it is obvious to combine them to achieve the invention – especially when the motivation to combine is from Applicant's disclosure.

More recently, the Federal Circuit decided the case of In re Lee, 277 F. 3d 1338, 2002 US App. Lexis 855, 61 USPQ 2d (BNA) 1430 (Fed. Cir. 2002). This case expressly

prohibits using Applicant's claims as a roadmap by which to combine references, which is what the Examiner has done here.

Claims 1 & 13

Against claims 1 and 13, the Examiner has applied a combination of Bessel and Mrgulis.

Bessel appears to be a device, which may, in a conventional fashion, contain a POD card.

Mrgulis shows a wireless base station 156 that can communicate with a remote device 158. Mrgulis also shows a plurality of program sources 112. These are coupled with a switcher 138 that routes the sources to the wireless base station 156.

In the advisory action, the Examiner has withdrawn his characterization of Mrgulis as having a POD. Instead, Mrgulis is merely cited for wireless communication with other devices.

Were a conventional POD module such as shown in Bessel to be inserted in Mrgulis, in accordance with the teachings of Bessel, that device should go into the cable decoder module 120. Applicants find no teaching or suggestion that Mrgulis's wireless communication device 156 be a POD. That suggestion comes, impermissibly, from Applicant's disclosure.

Applicants accordingly submit that the Examiner has failed to make a *prima facie* case against the independent claims.

Claims 2 and 14

The Examiner purports to find the additional features of these dependent claims in Mrgulis. The Examiner points to features of the wireless unit 156, particularly as illustrated with respect to Fig. 6. The Examiner alleges that the wireless unit 156 may be transmitting IP packets. The Examiner particularly points to the WAN unit 656.

Applicant believes that the Examiner is mischaracterizing the reference here. Applicant does not understand the WAN unit 656 to be connected directly to the Internet. Applicant understands the WAN unit 656 to be connected to program sources 112 via switcher 138. Applicant continues to believe that if there is a security device, it is going to be in the program sources area 112, for instance personal computer 114. All of these sources are routed to the wireless device 156 via the switcher 138.

Applicant respectfully submits that there is no reason to infer any PCD-like security function exists in the wireless base station 156, except through impermissible hindsight reconstruction in light of Applicant's disclosure.

Claims 3-5, 9-11 and 15-17, 21

Against the additional features recited in these dependent claims, the Examiner cites Hendricks. Hendricks shows removable hardware upgrades to a set top terminal. Applicants are not finding any teaching or suggestion — at least in the portions cited

by the Examiner — that these upgrades are POD modules as that term is currently understood in the art. In the appendices, Applicants include an Internet article dated 1999, significantly after Hendricks, explaining the nature of POD modules. Applicants accordingly respectfully submit that once again these rejections are improper hindsight reconstructions — that the motivation to combine these teachings with the other references comes from Applicants' claims and disclosure, not from the references themselves.

Claim 12

Against the additional recitations of this dependent claim the Examiner cites network controller 214 of Hendricks, and col. 22, line 64 through col. 23, line 10. These do not appear to relate to the hardware upgrade modules A/D that the Examiner is reading the claims on. Network controller 214 is in the host device. The Examiner also cites hardware upgrade module B (col. 27, lines 11-22). As far as Applicants can tell, upgrade B relates to database applications, not to e-mail. Accordingly, Applicants respectfully submit that the Examiner is mischaracterizing the reference here and has not made a *prima facie* case against claim 12.

Claims 24 & 26

Against the additional features recited in these dependent claims, the Examiner cites Bessel/Mrgulis/Hendricks. Many deficiencies of these references have already

been discussed. However, these claims, as a whole, recites functionality that cannot be envisioned merely by reading the references, namely that a single device having both POD functions and an application program and wireless communication, can be sold as a single removable apparatus for a set top box. Cobbling together these references — using Applicants' claims as a road map as the Examiner has done — just does not result in teaching or suggesting this concept as a whole. Applicants accordingly respectfully submit that the Examiner has failed to make a *prima facie* case against these claims.

Claims 6-8 and 18-20

Against the additional recitations of this dependent claim the Examiner cites Laubach, in combination with the prior references. Applicants respectfully submit that the Rube-Goldberg type combination here of four separate references militates against a finding of obviousness, especially since the motivation to combine them comes from Applicants' claims. Moreover, Applicants are unable to determine what relationship the module 1301 might have with a POD. Applicants respectfully submit therefore that the Examiner has failed to make a *prima facie* case against these claims.

Claim 25 & 27

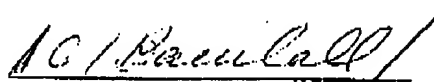
The Examiner recognizes here the nature of POD modules, which is emphasized in these claims — but does not, seemingly, understand the significance of these recitations, namely that most of the references, except for Bessel, do not relate to

the field of POD modules. Mrgulis, for instance, also applied against these claims, is not applicable to the field of POD modules, as explained before. Hence, the Examiner has failed to present a *prima facie* case against these claims.

VII. CONCLUSION

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Such allowance is therefore respectfully requested.

Respectfully submitted,



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CLAIMS APPENDIX

1 1. (original) For use in a digital cable set-top box capable of being coupled to
2 a television set, a removable circuit apparatus capable of being inserted into a point of
3 deployment (POD) host interface associated with said digital cable set-top box, said
4 removable circuit apparatus comprising:

5 a point of deployment (POD) module interface capable of mating with said POD
6 host interface; and

7 a RF transceiver coupled to said POD module interface capable of receiving an
8 incoming baseband signal from said digital cable set-top box, upconverting said baseband
9 signal to an outgoing RF signal, and wirelessly transmitting said outgoing RF signal to at
10 least one wireless communication device proximate said digital cable set-top box and
11 further capable of wirelessly receiving an incoming RF signal from said at least one
12 wireless communication device, downconverting said incoming RF signal to an outgoing
13 baseband signal, and transmitting said outgoing baseband signal to said digital cable set-
14 top box.

2. (original) The removable circuit apparatus as set forth in Claim 1 wherein
said incoming baseband signal and said incoming RF signal comprise Internet protocol (IP)
data packets.

3. (original) The removable circuit apparatus as set forth in Claim 2 further

2 comprising:

3 a data processor coupled to said POD module interface and capable of
4 transmitting to said digital cable set-top box at least one of an audio signal and a video
5 signal capable of being displayed on a screen of said television set; and

6 a memory coupled to said data processor capable of storing a user POD
7 application program executable by said data processor, where in said user POD application
8 program is operable to cause said data processor to control operation of said RF
9 transceiver.

4. (original) The removable circuit apparatus as set forth in Claim 3 wherein
said data processor is capable of receiving user input signals from said digital cable
set-top box.

5. (original) The removable circuit apparatus as set forth in Claim 4 wherein
said user input signals comprise infrared signals detected by an infrared sensor
associated with said digital cable set-top box.

6. (original) The removable circuit apparatus as set forth in Claim 3 further
comprising a user interface coupled to said data processor capable of receiving user
inputs from a user input device coupled to said user interface.

7. (original) The removable circuit apparatus as set forth in Claim 6 wherein

said user input device comprises a keyboard.

8. (original) The removable circuit apparatus as set forth in Claim 6 wherein said user input device comprises a mouse.

9. (original) The removable circuit apparatus as set forth in Claim 3 further comprising a disk storage device capable of storing said user PDA application program

10. (original) The removable circuit apparatus as set forth in Claim 3 further comprising a disk storage device capable of storing at least one of audio files, video files, graphics files, and text files associated with said user PDA application program

11. (original) The removable circuit apparatus as set forth in Claim 3 wherein said user PDA application program further comprises a video game program

12. (original) The removable circuit apparatus as set forth in Claim 1 wherein said user PDA application program further comprises an e-mail program

1 13. (original) For use in a digital cable set-top box capable of being coupled to
2 a television set, a removable circuit apparatus capable of being inserted into a point of
3 deployment (PD) host interface associated with said digital cable set-top box, said
4 removable circuit apparatus comprising:

5 a point of deployment (POD) module interface capable of mating with said POD
6 host interface; and

7 a RF transmitter coupled to said POD module interface capable of receiving an
8 incoming baseband signal from said digital cable set-top box, upconverting said baseband
9 signal to an outgoing RF signal, and wirelessly transmitting said outgoing RF signal to at
10 least one wireless communication device proximate said digital cable set-top box.

14. (original) The removable circuit apparatus as set forth in Claim 13 wherein
said incoming baseband signal comprises Internet protocol (IP) data packets.

1 15. (original) The removable circuit apparatus as set forth in Claim 14 further
2 comprising:

3 a data processor coupled to said POD module interface and capable of
4 transmitting to said digital cable set-top box at least one of an audio signal and a video
5 signal capable of being displayed on a screen of said television set; and

6 a memory coupled to said data processor capable of storing a user POD
7 application program executable by said data processor, wherein said user POD application
8 program is operable to cause said data processor to control operation of said RF
9 transmitter.

16. (original) The removable circuit apparatus as set forth in Claim 15 wherein

said data processor is capable of receiving user input signals from said digital cable set-top box.

17. (original) The removable circuit apparatus as set forth in Claim 16 wherein said user input signals comprise infrared signals detected by an infrared sensor associated with said digital cable set-top box.

18. (original) The removable circuit apparatus as set forth in Claim 15 further comprising a user interface coupled to said data processor capable of receiving user inputs from a user input device coupled to said user interface.

19. (original) The removable circuit apparatus as set forth in Claim 18 wherein said user input device comprises a keyboard.

20. (original) The removable circuit apparatus as set forth in Claim 18 wherein said user input device comprises a mouse.

21. (original) The removable circuit apparatus as set forth in Claim 14 wherein said IP data packets comprise at least one of AM radio baseband signals and FM radio baseband signals.

1 22. (previously presented, but not on appeal) A method for changing the functionality

2 of a consumer electronics device, the device comprising a user interface for allowing a
3 user to experience content and a set top box, the set top box comprising a POD module
4 for converting content from a network format to a local format and vice versa, the
5 method comprising:

- 6 • starting with the set top box coupled with a first POD module associated with a
7 first functionality for the device, the first POD module having wireless connections
8 with both the set top box and with the network;
- 9 • removing the first POD module; and
- 10 • replacing the first POD module with a second POD module associated with a second
11 functionality for the device, the second module also having wireless connections
12 with both the set top box and the network.

23. (previously presented, but not on appeal) The method of claim 22, wherein one of
the first and second functionalities is one of the group: television, e-mail, digital
radio, and at least one video game; and the other of the first and second
functionalities is a different one of the group.

1 24. (previously presented) The circuit of claim 1, wherein the removable circuit
2 apparatus is adapted to enable a respective consumer electronics function for the
3 television set, so that changing between such apparatuses changes the function the
4 television set presents to a user.

25. (previously presented) The circuit of claim 24, wherein the removable circuit apparatus is adapted to act as a security device enabling or blocking a specific data service.

26. (previously presented) The circuit of claim 13, wherein the removable circuit apparatus is adapted to enable a respective consumer electronics function for the television set, so that changing between such apparatuses changes the function the television set presents to a user.

27. (previously presented) The circuit of claim 26, wherein the removable circuit apparatus is adapted to act as a security device enabling or blocking a specific data service.

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EVIDENCE APPENDIX

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Copies of evidence 41.37 (c)(1)(ix)

The following is a copy of an Internet article previously submitted with the amendment under rule 116

SCM Microsystems Teams with Industry Leaders to Demonstrate Significant Milestone Enabling Retail Market for Cable TV

LOS GATOS, Calif., Aug. 3 /PRNewswire/ -- SCM Microsystems Inc. (Nasdaq: SCMM; Neuer Markt: SMY), a leading OEM supplier of digital access control and connectivity solutions, teamed with major consumer electronic manufacturers, head-end providers and conditional access system suppliers to successfully demonstrate interoperability of removable security modules with the first generation of OpenCable(TM) cable-ready device prototypes last week at the OpenCable(TM) POD Interoperability Event in Colorado. The point-of-deployment (POD) module will provide cable operators with a removable security device at the customer's location that is tied to their particular service so that consumers can buy a single set-top box or television (host device) from their local retailer and use it with any cable provider.

To prepare this demonstration and extend the market interoperability, SCM has jointly created the POD Interoperability Forum with DiviCom(R), Mindport, NagraVision, NDS, Panasonic, Philips, Pioneer, Samsung and Sony. The group is a forum open to any new participant willing to support "built for interoperability" products and rely on CableLabs(R) to measure and certify progress.

"The demonstration this week marks a significant milestone," explained Nick Efthymiou, executive vice president and general manager of SCM Microsystems' Digital TV and PC Security Division. "For the first time, we can see multiple prototypes that aim to support a complete OpenCable(TM) system, working together. It is the result of companies which have overcome their mutual competitive interests and solved several compatibility issues. This achievement provides an architecture which permits the integration of new features such as out-of-band channels and copy protection of premium content. We look forward to continuing to work with our current partners and CableLabs(R) in resolving these issues, and hope to see the number of companies participating in these interoperability demonstrations expand."

The demonstration showed Panasonic, Philips and Samsung receiver prototypes connected to a DiviCom head-end and receiving through four different POD prototypes, channels simultaneously encrypted by Mindport, NagraVision, NDS and Philips conditional access systems. SCM provided POD interface hardware, software and development tools to the consumer electronic manufacturers and various POD module platform prototypes to the conditional access suppliers.

In addition, SCM demonstrated its new development and certification tool, the POD Tool(TM), developed under contract from CableLabs for POD host interface validation of the OpenCable(TM) cable-ready TV receivers, and announced its market availability for the end of August 99.

"SCM is committed to supplying a cost-effective, interoperable POD module

platform to all conditional access vendors by July 2000," said Steve Humphreys, SCM Microsystems' chairman. "By providing our proven technology, we expect the forum to reach the level of interoperability required to comply with the FCC's Order of June 1998, and for a successful retail market."

The Telecommunications Act of 1992 and 1996 require that cable subscribers have the option to purchase the equipment required to receive cable service. The FCC's Report and Order released in June of 1998 requires that the cable operators enable the commercial sale of host devices by making separable security modules available by July 1, 2000.

Quotes from SCM's POD Interoperability Forum Partners

"The OpenCable initiative is changing the dynamics of the US cable market and DiviCom is pleased to deliver the leading edge technology that fuels these changes," said Tom Lookabaugh, President of DiviCom Inc. "By opening the cable market to true competition, service providers will benefit from an expanded range of dynamic services and technology, as well as a reduced cost of ownership for a digital television system."

"Mindport is a highly experienced global end-to-end system solutions provider with cable, satellite and ISP customers in more than 50 countries," said Phil Braden, President of Mindport Inc. (Nasdaq: MIHL). "Mindport believes in open standards and is extremely well versed with the challenges of successfully implementing multi-vendor, interoperable systems. The development of the POD module, combined with our proven technology portfolio and experience will enable Mindport to provide open, standards-based solutions to the North American cable television market."

"Retail availability of Digital Cable Set-top Boxes and, in the near future, Digital Televisions that support Pay services, will require interoperable, highly secure and, most importantly, cost effective Conditional Access infrastructures," said Alan Guggenheim, NagraVision's SVP of Strategic Business Development. "NagraVision is committed to providing compelling, OpenCable-compliant solutions by July 2000."

"NDS looks forward to offering its conditional access POD module enabling the cable industry to make the most of its digital future. In an open and competitive conditional access environment, the cable industry will be able to offer lower costs, better security, and advanced services such as interactivity and electronic shopping," says Dr. Dov Rubin, Vice President and General Manager of NDS Americas Inc.

"We are actively engaged in and committed to the development of OpenCable-compliant cable navigation devices for the US market," said Frank Romeo, Director of Panasonic AVC American Labs' Technical Marketing Department. "The POD interoperability testing at CableLabs is an important milestone in the development of these devices."

"Philips is committed to integrate the OpenCable POD module interface in our set top boxes by July 2000. The CryptoWorks conditional access system integrates in Open standards, for July 2000 we will have a CryptoWorks POD module available."

"Pioneer is actively engaged and committed to the concept and development of OpenCable-compliant products for the US retail market," says Neil Jones, Sr. VP Business Development for Pioneer Digital Technologies, Inc. "The development of a POD module for the retail digital set-top is an important turning point for the cable TV industry, and Pioneer is ready to play a major role in it."

"The POD module interoperability test is a great milestone in the OpenCable development," said Jack Chaney, Director of Samsung's Multimedia Technology Center. "The POD module and interface is a necessity for an open retail market for cable ready devices."

"By providing a renewable and replaceable core conditional access system, the POD module ensures retail availability of cable navigation devices,

allowing multiple models of cable ready devices to coexist within any cable Multiple System Operators (MSOs) network," said Henry Derovanessian, Vice President of Sony's Digital Media of Americas Engineering group. "Through the OpenCable initiative, Sony is committed to support CableLabs' effort to define and draft set of standard interfaces to reach the level of openness and interoperability essential for a competitive and prosperous retail market."

About SCM Microsystems

SCM Microsystems, Inc. (Nasdaq: SCMM), with headquarters in Los Gatos, California, European headquarters in Germany, research, development and support centers in France, India, Japan, Germany, and the United Kingdom, and production, sales and engineering facilities in Singapore and Taiwan, is a leading provider of products and technologies which enable OEMs to provide applications for endusers to control, access, and exchange digital information with digital platforms like PCs and digital TV set-top boxes. SCM Microsystems is a leading developer and supplier of plug and play OEM peripheral interfacing technology, including ASIC interfacing solutions, firmware, and software. By bridging smart cards, digital media cards and other secure devices with PCs, Workstations and digital set-top boxes, SCM Microsystems provides cost-effective solutions for conditional access to mobile, handheld and desktop computers, workstations, digital video broadcasts, virtual private networks, electronic files, and e-mail.

For additional information, contact SCM Microsystems in the United States at (408) 370-4888 or in Europe at 49-8441-8960 or e-mail adapter@scmmicro.com. The company maintains a Web site at <http://www.scmmicro.com>.

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